

TITLE 16. BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS

NOTICE IS HEREBY GIVEN that the **Board of Vocational Nursing and Psychiatric Technicians (Board)** is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at the **Department of Consumer Affairs, Hearing Room, Room 100, 400 R Street, Sacramento, CA 95814 at 1:30 p.m., on Tuesday, July 1, 2003**. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the **Board** at its office not later than 5:00 p.m. on **Monday, June 30, 2003**, or must be received by the **Board** at the hearing. The **Board**, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by **section 2854** [Vocational Nursing (VN)]; and **Section 4504** [Psychiatric Technician (PT)] of the Business and Professions (B&P) Code, and to implement, interpret or make specific **section 2882 and section 2875 (VN); and section 4531 and section 4520 (PT)** of said Code, the **Board** is considering changes to **Division 25 of Title 16** of the California Code of Regulations (CCR) as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Pursuant to B&P section 2854 (VN); and B&P Code section 4504 (PT), the Board may adopt, amend, or repeal such rules and regulations as may be reasonably necessary to enable it to carry out the provisions of these chapters.

The Board, having adopted concepts to amend its regulations on April 12, 2002 (VN); September 6, 2002 (VN); February 21, 2003 (VN and PT); and April 11, 2003 (VN), proposes the following amendments relative to (1) education; and (2) enforcement:

(1) Proposed Education Regulatory Changes

The Board proposes amendments to Article 5, sections 2526, 2529, 2532, 2533 and 2534, relative to schools of vocational nursing (VN); and to Article 5, sections 2581, 2584, 2586, 2587, 2588 and 2588.1, relative to psychiatric technician (PT) schools.

Section 2526, VN; and section 2581, PT, specify the procedures for accreditation for VN and PT programs, and specify the time period in which a program may admit alternate students. Alternate students may be admitted in each new class to replace students who drop out, and may participate in class sessions until the commencement

of clinical experience in clinical facilities.

Attrition occurs during the initial laboratory experience because some students are unable to meet the demands of the nursing program and drop out. The admission of alternate students enables programs to educate a maximum number of students given available resources.

Proposed amendments to section 2526(a)(14) VN; and section 2581(a)(14) PT, permit alternate students to participate in clinical experience in the campus skills laboratory. The proposal limits the number of alternate students a program may enroll; specifies that once clinical experience in clinical facilities is initiated, the number of students in the class must be within the program's Board-approved class size; and requires that alternate students must be informed in writing of their alternate status.

Section 2529, VN; and 2584, PT, specify the faculty qualifications for VN and PT programs, and specify that "persons of other disciplines" may teach curriculum content. The regulation states that any person who has the qualifications to teach in a community college or a state university in California or holds a baccalaureate degree in the field related to the curriculum content taught, or meets the requirements for a vocational education credential to teach "non-nursing" courses such as Anatomy and Physiology, Pharmacology or Nutrition, may be additional faculty. However, it is unclear whether nurses or PTs may be considered "additional faculty."

Proposed amendments to section 2529(c)(4) VN; and section 2584(c)(4) PT, more fully carry out the intent of the regulation by specifying that, with qualifying education, "registered nurses," "licensed vocational nurses," and "PTs" may be additional faculty.

Section 2584, PT, also specifies the faculty qualifications for accredited PT programs. As currently written, registered nurses are not included in the criteria for qualifying as a "teacher assistant" in a PT program.

Proposed amendment to section 2584(c)(5)(A) and (B), PT, adds licensure as a registered nurse to the qualifications for teacher assistant in a PT program. The amendment corrects an inadvertent omission in the regulations, and brings them parallel to VN regulations.

Section 2532, VN; and 2586, PT, specify the number of required curriculum hours for accredited VN and PT programs, and additionally specify the maximum length of a school day. Currently, the maximum length of the school day allowed by regulation is eight hours.

Most clinical facilities have 12-hour shifts in order to maximize staffing efficiency. Students limited to a maximum of 8 hours-per-day clinical experience are deprived of valuable "real life" clinical experience. When students leave before the actual end of a shift, the nursing staff is interrupted and students' learning is disrupted by a lack of continuity. In addition, some clinical facilities refuse to accept students who cannot

complete a full 12-hour clinical shift.

Proposed amendments to section 2532(c), VN; and section 2586(c), PT, modify the required curriculum hours to permit 12-hour days for clinical experience, only; school days which consist of theory classes or a combination of theory and clinical experience may not exceed eight hours.

Section 2533, VN; and section 2587, PT, specify the required curriculum content for accredited VN and PT programs and additionally specify which courses may be taught by “non-nurses” (VN); and by “other professional instructors” (PT).

Proposed amendments to section 2533(e), VN; and section 2587(e), PT, delete the term “non-nurse” (VN); and the term “other professional instructors” (PT), and replaces them with the term “additional faculty.”

Section 2534, VN; and section 2588, PT, specify the required clinical experience for accredited VN and PT programs, and limit the percentage of time which may be applied to clinical experience during the evening shift to fifty percent, except by Board-approval.

Clinical facilities are increasingly impacted with patients and students. Board-approval of greater than fifty percent evening clinical evening hours has become more and more commonplace as programs struggle to achieve the number of clinical hours required in the curriculum content. When the regulations were originally promulgated, patient care performed during evening hours was different and less complex than that performed during the daytime hours, and therefore limited student learning experiences. As the severity of illness of hospitalized patients increases, care given on the day shifts and on the evening shifts has become the same. Required learning experiences can now be garnered on either shift. Deleting the requirement that programs obtain Board-approval for greater than fifty percent evening clinical hours would permit programs the choice of using either the day shift or the evening shift to obtain clinical experiences for their students, and will facilitate scheduling changes based on unanticipated needs of the program or clinical facility.

Section 2588.1, PT, specifies the general requirements for clinical preceptorships. With prior Board-approval, PT programs may offer an optional clinical preceptorship during the last nine weeks of the program.

The proposed amendment to section 2588.1(c) corrects an inadvertent error by deleting the term “licensed vocational nurse” in the meaning of “preceptor,” and replacing it with the term “psychiatric technician.”

(2) Proposed Enforcement Regulatory Changes

To establish its Consumer Complaint Disclosure Policy in regulation, the Board proposes to add section 2524.1, VN; and section 2579.11, PT, to Article 4.*

Protection of the health, safety, and welfare of California consumers is the Board's highest priority. To ensure such protection, the Board is authorized to investigate complaints of unprofessional conduct and unsafe, incompetent practice by LVNs and PTs.

Pursuant to the California Government Code (Public Records Act), the public has a distinct right to access information in the government's possession. However, unconditional access is not authorized. Specific information pertaining to complaints alleging misconduct by licensees and relevant investigations are exempt from disclosure.

The Board initially adopted a policy relative to complaint disclosure on May 14, 1993. In July 2001, the Department of Consumer Affairs (DCA) introduced discussion of consumer complaint disclosure standards. The intent of establishing such standards was enhancement of consumer protection. After extensive feedback from boards, bureaus, and the public, "Recommended Minimum Standards for Consumer Complaint Disclosure" were adopted by the DCA in July 2002. The DCA recommended that all boards use the standards as a framework for the development of specific standards and/or a complaint disclosure policy by each board.

In February 2003, after careful consideration of the recommended standards, the Board adopted a revised Consumer Complaint Disclosure Policy. The policy clarifies specific information that may be disclosed relative to complaints against licensed vocational nurses and psychiatric technicians while maintaining the integrity of investigations and/or prosecutions.

Proposed amendments to section 2524.1, VN; and section 2579.11, PT establish the Board's "*Consumer Complaint Disclosure Policy* (Rev. 02/21/03)" in regulation by reference.**

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: **None**

Nondiscretionary Costs/Savings to Local Agencies: **None**

Local Mandate: **None**

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: **None**

Business Impact:

The **Board** has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Surveys of VN and PT program directors and employers of LVNs and PTs, as well as a review of current healthcare literature were relied upon in proposing the adoption of these regulations.

It is projected that there will be no reporting, recordkeeping or other compliance requirements resulting from the proposed action.

The **Board** has not identified proposed alternatives that would lessen any adverse economic impact on business and invites you to submit such proposals. Submissions may include the following considerations:

(A) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.

(B) Consolidation or simplification of compliance and reporting requirements for businesses.

(C) The use of performance standards rather than prescriptive standards.

(D) Exemption or partial exemption from the regulatory requirements for businesses.

The rulemaking file includes the facts, evidence, documents, testimony, and/or other evidence which supports this determination.

Impact on Jobs/New Businesses:

The **Board** has determined that this regulatory proposal will not have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business:

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: **None**

EFFECT ON SMALL BUSINESS

The **Board** has determined that the proposed regulations would not affect small businesses. The proposed amendments do not alter staffing or equipment needs in any small business.

CONSIDERATION OF ALTERNATIVES

The **Board** must determine that no reasonable alternative to the regulation would either be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The **Board** has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the **Board at 2535 Capitol Oaks Drive, Suite 205, Sacramento, California 95833.**

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Kim Frankland, Administrative Assistant
Address: 2535 Capitol Oaks Drive, Suite 205
Sacramento, CA 95833
Telephone No.: (916) 263-7848
Fax No.: (916) 263-7859
E-Mail Address: Kim_Frankland@DCA.CA .GOV

The backup contact person is:

Name: Suellen Clayworth, Nursing Education Consultant
Address: 2535 Capitol Oaks Drive, Suite 205
Sacramento, CA 95833
Telephone No.: (916) 263-7841
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Materials regarding this proposal can be found at www.bvnpt.ca.gov.

5/16/03 Corrected Version

* To correct an erroneous reference to the Board's disciplinary guidelines in the Notice published on 5/16/03 in the California Regulatory Notice Register, the sentence, "*Article 4, section 2524 (VN), and Article 4, section 2579.10 (PT), specify the disciplinary guidelines for licensed vocational nurses (LVNs) and PTs.*", is deleted.

** To correct an incomplete citation of the document proposed to be incorporated by reference in regulation in the Notice published on 5/16/03 in the California Regulatory Notice Register, the date of publication, "(Rev. 02/21/03)", is added to the title "*Consumer Complaint Disclosure Policy.*"

5/6/03 Filing Date
5/16/03 Correction Date
5/16/03 Publication Date